IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) No.864/2007

Sh. Abhishek Khanna ..... Petitioner
! through: Mr.Madan Lal Sharma, Advocate
and Mr.Varun Nischal, Advocate

VERSUS

$ Smt. Ritika Seth ..... Respondent
^ through: Mr.Munish Tyagi, Advocate

% **D**ATE OF DECISION: 26-11-2007

CORAM:
* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

1. Vide the present petition petitioner(husband) has challenged the order dated 21.5.2007 passed by the learned Matrimonial Judge deciding respondent (wife) application under Section 24 of the Hindu Marriage Act, granting interim monthly maintenance of Rs.10,000/- with effect from the date of her application. Litigation expenses in sum of Rs.25,000/- have been awarded in addition.

2. Parties were married as per Hindu rites and custom on 26.1.04. The marriage turned sour. Petitioner filed a petition

under Section 13(1)(i-a) of the Hindu Marriage Act seeking dissolution of the marriage. During pendency of the said petition, the respondent filed an application under Section 24 of the Hindu Marriage Act for interim maintenance.

3. Seeking interim maintenance respondent stated that she has no source of income.

4. In support of her claim respondent pleaded that the petitioner was having a monthly income of Rs.1,20,000/-. She further stated that the petitioner was having an income from the following sources:-

i. Petitioner is a partner in a Leather Factory being run at D-1/17, Raghu Nagar, Syndicate Enclave, Dabri Mor, Janakpuri, New-Delhi.

ii. Petitioner is a partner in a firm carrying its business under the name and style of 'Maya Express”.

iii. Petitioner is a partner in a firm engaged in the business of sale and purchase of cars.

iv. Petitioner is a shareholder in the business of his father of the construction of housing societies. The income of the petitioner from the said business is Rs.75,000/- per month.

v. Petitioner is the co-owner of the first floor of the property bearing Municipal No.A-103, Derawal Nagar, Delhi and having a rental income of Rs.20,000/- from the said property. It

was further stated in the application that the second floor of the aforesaid property was purchased in the joint name of respondent and her father-in-law and that entire sale consideration of Rs.40 lakhs was paid by father of the respondent.

5. Opposing the application, petitioner stated that he is unemployed and has no source of income and that he is totally dependent on his father. He further pleaded that the respondent is engaged in the business of jewelery designing and her income from the said business is Rs.2 lakhs per annum. In support whereof, he filed two income tax returns purported to have been filed by the respondent for the assessment years 2001-02 and 2003-04 respectively.

6. After noting the rival versions, vide order dated 21.5.07 the learned Matrimonial Judge has granted monthly maintenance in sum of Rs.10,000/- in favour of the respondent.

7. While deciding the application, the learned Matrimonial Judge has noted following two facts which according to the learned Judge suggest that the petitioner had tried to conceal his true income from the Court.

i. A receipt filed by the respondent evidencing that the petitioner had paid a sum of Rs.5,000/- towards premium of some policy. The learned Judge has noted that the petitioner has not been able to explain as to how he paid a sum of Rs.5,000/- if he is

unemployed and earning nothing.

ii. Petitioner had admitted that the second floor of the property bearing Municipal No.A-103, Derawal Nagar, Delhi was purchased in the joint name of the respondent and his father but has further stated that his father paid the sale entire sale consideration. Learned Judge has noted that the petitioner has pleaded that his father is a retired person and pension in sum of Rs.7,000/- is his only source of income. Learned Judge has further noted that the petitioner has not explained as to how his father was able to purchase a property in a posh colony of North Delhi.

8. As regards the income tax returns purported to have been filed by the respondent, the learned Matrimonial Judge has opined that the said income tax returns pertain to period prior to respondent's marriage and thus do not show that respondent is engaged in the business of jewelry designing even after her marriage.

9. Assailing the order dated 21.5.07, the present petition has been filed invoking the remedy provided under Article 227 of the Constitution of India.

10. While considering a claim for interim maintenance, it is important to insure that the maintenance awarded to the applicant is sufficient to enable the applicant to live in somewhat the same degree of comfort as in the matrimonial home, but it

should not be so exorbitant that the non applicant is unable to pay.

11. Maintenance awarded cannot be punitive. It should aid the applicant to live in a similar life style she/he enjoyed in the matrimonial home. It should not expose the non applicant to unjust contempt or other coercive proceedings. On the other hand, maintenance should not be so low so as to make the order meaningless.

12. As opined in various judicial decisions it is usual tendency to not truthfully disclose one's income when a dispute between husband and wife surfaces. For self employed persons or persons employed in the unorganized sector, truthful income never surfaces. Tax avoidance is the norm. Tax compliance is the exception in this country. Therefore, in determining interim maintenance, there cannot be mathematical exactitude. The court has to take a general view.

13. Unfortunately in India people buy properties benami in somebody's else name. As in the instant case the second floor of the property bearing Municipal No.A-103, Derawal Nagar, Delhi was purchased in the joint name of the father of the petitioner and the respondent none of whom had paid the sale consideration.

14. As held in the decision dated 18.04.07 in CM(M)

No.40/05 titled as '*Bharat Hegde v Saroj Hegde*', the following are the guiding factors which have to be taken into consideration while adjudicating claims under Section 24 of the Hindu Marriage Act:-

1. Status of the parties.

2. Reasonable wants of the claimant.

3. The independent income and property of the claimant.

4. The number of persons, the non applicant has to maintain.

5. The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.

6. Non-applicant's liabilities, if any.

7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.

8. Payment capacity of the non applicant.

9. Some guess work is not ruled out while estimating the income of the non applicant when all the sources or correct sources are not disclosed.

10. The non applicant to defray the cost of litigation.

11. The amount awarded u/s. 125 Cr.PC is adjustable against the amount awarded u/s. 24 of the Act."

15. The income of an individual can be inferred from the social status enjoyed by him.

16. Marriage is a religious function but in modern times

has become a social event. The manner in which parties marry, the plan and number of functions held gives good guidance about the social status of an individual.

17. A perusal of the invitation card of the marriage of the parties shows that the sagan ceremony of the parties was held at the Convention Hall, Ashoka Hotel, mehndi ceremony was held at the farmhouse Invitation Ceremonial, Delhi, wedding ceremony was held at the farmhouse Woodstock Garden, Vasant Kunj and reception was held at the farmhouse Invitation Green, Ali Pur, Delhi.

18. One of the venue is a five star hotel and remaining 3 venues are farmhouses of five star standard.

19. It can reasonably be estimated that parties must have spent between Rs.8-10 lakhs in each function.

20. In the light of the fact that the parties had spent atleast Rs.8-10 lakhs on food, beverages and entertainment expenses on each of the 4 functions, it is difficult to believe that the petitioner does not have the requisite means to support his wife a monthly maintenance of Rs.10,000/-.

21. As regards the respondent, there is no proof of she having any income after her marriage.

22. I find no merits in the petition.

23. No costs.

November 26, 2007 (PRADEEP NANDRAJOG)
sl JUDGE